

New Jersey State Tax News

Fall 2000

inside

<i>nj earned income tax credit.....</i>	<i>1</i>
<i>sales tax initiatives.....</i>	<i>2</i>
<i>sales tax holidays</i>	<i>3</i>
<i>inactive business schedule</i>	<i>3</i>
<i>nyc tax on nj residents</i>	<i>4</i>
<i>investment clubs</i>	<i>4</i>
<i>executor commissions.....</i>	<i>5</i>
<i>discovery contract expires.....</i>	<i>5</i>
<i>hazardous waste pickup</i>	<i>5</i>
<i>weigh stations.....</i>	<i>6</i>
<i>2000 package njx.....</i>	<i>6</i>
<i>federal offset program</i>	<i>6</i>
<i>taxpayer accounting branch.....</i>	<i>7</i>
<i>practitioner institutes.....</i>	<i>7</i>
<i>excluded sales</i>	<i>9</i>
<i>co-op/continuing care properties</i>	<i>9</i>
<i>tax maps</i>	<i>10</i>
<i>local property compliance units</i>	<i>10</i>
<i>tax assessors' calendar</i>	<i>11</i>
<i>tax assessor certificates.....</i>	<i>12</i>
<i>criminal enforcement.....</i>	<i>12</i>
<i>tax briefs.....</i>	<i>14</i>
<i>enforcement summary stats</i>	<i>14</i>
<i>in our courts</i>	<i>19</i>
<i>in our legislature</i>	<i>21</i>
<i>tax calendar</i>	<i>22</i>
<i>from the director's desk.....</i>	<i>24</i>

NJ Earned Income Tax Credit Program

Legislation approved by Governor Whitman August 14, 2000 (P.L. 2000, c.80) created the New Jersey Earned Income Tax Credit Program (NJEITC).

Under this new program, New Jersey households that receive a Federal earned income credit which is based on having at least one "qualifying child," and whose New Jersey gross income is \$20,000 or less, and whose filing status for New Jersey purposes is either married, filing joint return or head of household or qualifying widow(er), are eligible for a refundable New Jersey tax credit.

Benefits under the New Jersey Earned Income Tax Credit Program are being phased in over a four-year period. The amount of the New Jersey credit for tax year 2000 will be equal to 10% of the applicant's Federal earned income credit. The NJEITC amount will increase to 15% of the Federal earned income credit for tax year 2001, 17.5% for tax year 2002 and will total 20% of the Federal credit for tax year 2003 and thereafter.

To apply for the NJEITC, eligible residents must file a New Jersey resident income tax return and complete the New Jersey Earned Income Tax Credit Schedule portion of the tax return form. Those who wish to receive the credit must file a tax return even if they do not owe any tax to New

Jersey and are not required to file a return because their income is below the minimum filing threshold. The New Jersey earned income tax credit reduces the amount of New Jersey tax owed, if any, or may give the taxpayer a refund. The Division plans to introduce Form NJ-1040EZ for tax year 2000 to simplify the filing process for those whose income is below the filing threshold. See the winter issue for more details.

For tax year 2000, taxpayers are not required to file a New Jersey return if their income for the entire year is \$10,000 or less (filing status single), \$15,000 or less (filing status married, filing joint

continued on page 2

Important Phone Numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info	800-323-4400
.....	609-826-4400
Speaker Programs.....	609-984-4101
NJ TaxFax	609-826-4500

Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax	
Refunds.....	609-292-7018
Public Utility Tax	609-633-2576

<http://www.state.nj.us/treasury/taxation>

tax credit - from page 1

return, head of household or qualifying widow(er)), or \$7,500 or less (filing status married, filing separate return). For tax year 2001 and thereafter, these income levels will increase to \$20,000 or less (filing status married, filing joint return, head of household or qualifying widow(er)) and \$10,000 or less (filing status single or married, filing separate return). □

Sales and Use Tax Initiatives

Tax policy and procedures for collecting and remitting sales and use tax have been the focus of intense activity both in New Jersey and nationally.

Sales and Use Tax Review Commission. Effective March 1, 2000, the New Jersey Legislature created a Sales and Use Tax Review Commission to evaluate and report on proposed legislation that would either expand or contract the base of the New Jersey Sales and Use Tax law. Thus, for example, if legislation is proposed that would create a new exemption from sales tax, the Commission would be required to review it and report its conclusions to the Legislature.

The Commission consists of 10 members — the State Treasurer, three persons from the Executive Branch appointed by the Governor, two persons appointed by the President of the Senate, two persons appointed by the Speaker of the General Assembly and two persons appointed from the general public by the Governor. John Baldwin, former Director of the New Jersey Division of Taxation, has been appointed by Governor

Christine Whitman to be the Chairman of the Commission. Division of Taxation personnel will assist the Commission in the performance of its duties.

The Commission's duties involve obtaining a fiscal impact determination and providing a brief policy analysis concerning proposed legislation that would affect the base to which the New Jersey Sales and Use Tax law would apply. Within 90 days after the introduction of such legislation, the Commission is required to provide its recommendation to the New Jersey Legislature on the proposed legislation.

Members of the Sales and Use Tax Review Commission as of June 1, 2000 are: John R. Baldwin, Chairman; Deborah R. Bierbaum, AT&T; Jessica Furey, Department of Law & Public Safety; John T. Hanson, New Jersey Commerce Commission; Bernard B. Kornmehl, Assistant State Treasurer, Tax Policy; and Robert K. Thompson, Director, Division of Taxation.

All inquiries should be directed to Nicholas K. Catalano, Executive Secretary for the Commission at:

NJ DIVISION OF TAXATION
PO BOX 269
TRENTON, NJ 08695-0269

Phone: 609-292-5995

E-mail: nick.catalano@treas.state.nj.us

Streamlined Sales Tax Project.

The Streamlined Sales Tax Project, also called the Zero Burden System, is a joint effort among several states and the National Governors' Association (NGA), the Federation of Tax Administrators (FTA), and the Multistate Tax Commission (MTC) to design, test, and implement a new sales and use tax system for the 21st

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nj.taxation@treas.state.nj.us

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:

Robert K. Thompson

News Coordinators for This Issue:

<i>Audit</i>	Barbara Davidson
<i>Compliance</i>	Marita Sciarrotta
<i>Criminal Investigation</i>	Rosemary Tuthill
<i>Property Admin.</i>	Gary Amerine
<i>Technical Services</i>	Allette Wooley Ronald DeMarco

Contributors: Elizabeth Ashton, William Black, James Bruthers, Maryann Cortina, Gary DalCorso, Lee Evans, Joseph A. Flynn, Arthur J. Guenther, Kathleen Haller, Linda B. Hickey, Denise Lambert, John Mastellone, John Metzger, Donald A. Panfile, Thomas Reilly, Patrick J. Ryan, Rande Schutsky, Carol M. Trovato, Fred Wagner.

Staff: J. Donald Byrnes, Howard D. Luse, Terry A. McWilliams, Joanne M. Monte, Sara E. Murphey, Anu Ramachandran, Patricia A. Rubino, Daniel M. Tomasulo, Sr.

Editor: Sheri B. Silverstein

continued on page 3

century. The State of New Jersey supports the goals of the Project and is involved as a Participating state. Representatives from the New Jersey Division of Taxation attend monthly meetings and participate in the Work Group discussions.

The goal of the project is to reduce the burdens and costs that are currently imposed on local and remote sellers of property and services under the current systems for collecting, reporting and remitting taxes. The new system will increase uniformity, retain state flexibility, and maintain the highest level of security and privacy. It will ease consumer concerns regarding tax collection in online commerce transactions and streamline compliance for e-commerce companies as well as bricks and mortar businesses.

The Project plans to have a pilot launched in the fall of 2000. The pilot is intended to test the capabilities and limits of the current tax collection software, and will include several participating states, many software vendors and numerous retailers. It is anticipated that the information gathered in the pilot will assist the Work Groups in designing the new system. Additional information on the Project can be found at:

www.streamlinedsalestax.org □

Sales Tax Holidays in Other States

If you buy an item outside New Jersey that would *not* be tax-exempt in New Jersey, and you do not have to pay sales or use tax to the state where you bought it, you are still required to pay New Jersey "use tax" when you bring that item into New Jersey for use in this State. New Jersey's use tax rate is 6%, just like the sales tax rate.

For example, if you purchased a computer during Pennsylvania's "Tax-Free PC" week, and brought it into New Jersey to use here (or had it delivered to New Jersey), you must pay *use tax* to New Jersey if you did not have to pay sales or use tax to Pennsylvania. On the other hand, if you bought a shirt tax-free during a tax holiday in New York, you do not owe use tax to New Jersey, because the shirt would have been tax-exempt if you had purchased it here.

If you owe New Jersey use tax, send your payment to the State along with a completed Form ST-18, Individual Use Tax Return, within twenty (20) days after the property is brought into New Jersey. You can order use tax return forms from the Division's Automated Tax Information System (1-800-323-4400 or 609-826-4400) or from the NJ TaxFax Service at 609-826-4500. Form ST-18 can also be downloaded from the Division's Web site:

www.state.nj.us/treasury/taxation/

If you have questions about sales and use tax, call our Customer Service Center at 609-292-6400, from 8:30 a.m. to 4:30 p.m., Monday through Friday to speak to a Division representative. □

CORPORATION TAX

Schedule I for Inactive Businesses

In order to minimize the administrative burden placed on inactive corporations, in lieu of completing the entire CBT-100 or CBT-100S tax return for tax year 2000, such corporations need only complete Schedule I and attach it to page 1 of the return. Taxpayers must report the minimum tax liability, the installment payment (if applicable), and the annual report and/or registered agent change fees on page 1 of the Corporation Business Tax Return. Remittance for the entire balance due must be submitted with the return and Form CAR-100, the Corporation Business Tax Payment and Annual Report. Form CAR-100 is required to satisfy the annual report filing requirements.

An inactive corporation is a corporation that, during the entire period covered by the tax return, did not conduct any business, did not have any income, receipts, did not own any assets, and additionally for New Jersey S corporations, did not make any distributions and did not have any change in ownership.

To obtain a copy of Schedule I, call the Division of Taxation's Forms Request message system from a Touch-tone phone at 1-800-323-4400 (within NJ, NY, PA, DE or MD) or 609-826-4400 (anywhere) or write to Taxpayer Forms Services, PO Box 269, Trenton, NJ 08695-0269. Schedule I is available through NJ TaxFax at 609-826-4500 and can be downloaded from the Division of Taxation Web site at:

www.state.nj.us/treasury/taxation/

In lieu of Schedule I, a statement

continued on page 4

schedule i - from page 3

signed by a corporate officer attesting that the corporation was inactive may be submitted. □

GROSS INCOME TAX

Invalidation of NYC Tax on NJ Residents

New Jersey residents working in New York City have had to pay the New York City Nonresident Earnings Tax for all of 1999 although New York residents working in New York City have not had to pay that tax since July 1, 1999. On April 4, 2000, the highest court in New York invalidated the New York City Nonresident Earnings Tax back to July 1, 1999, thus equalizing the New York City Nonresident Earnings Tax on New Jersey residents and New York residents. New Jersey residents will be able to claim a refund of the New York City Nonresident Earnings Tax paid after July 1, 1999.

A taxpayer affected by the invalidation of the New York City Nonresident Earnings Tax — and many taxpayers will not be affected — must adjust the credit claimed for taxes paid to other jurisdictions on a New Jersey Amended Income Tax Resident Return (1999 Form NJ-1040X). The change in the amount of the credit is to be shown on Line 38 of the 1999 amended return. The taxpayer must state in the “Explanation of Changes to Income, Deductions and Credits” box on the same page as Line 38 that “This is an amended return reporting refund of New York City Nonresident Earnings Tax.”

To determine if an amended 1999 New Jersey gross income tax return has to be filed, a taxpayer

must use the total tax paid to New York less the amount of refund of New York City Nonresident Earnings Tax he expects to receive. If this amount is less than the amount found on Line 8 of the New Jersey Schedule A, the taxpayer needs to file an amended New Jersey gross income tax return with a corrected credit for taxes paid to other jurisdictions. If this amount is greater than the amount on Line 8 of the New Jersey Schedule A, a taxpayer is not required to file an amended New Jersey gross income tax return. If the taxpayer filed claiming a separate credit for taxes paid to New York City, he must file an amended New Jersey gross income tax return including a corrected tax credit for New York City.

Any resulting liability for New Jersey gross income tax must be paid with the filing of the amended 1999 New Jersey gross income tax return (Form NJ-1040X). The New Jersey Division of Taxation will waive both penalty and interest on that liability *if* the taxpayer files the amended 1999 New Jersey return and pays the gross income tax shown due on that return by December 15, 2000.

Information on the procedures New Jersey residents are to use to obtain a refund of the New York City Nonresident Earnings Tax is published on the Web site of the New York State Department of Taxation and Finance at:

www.tax.state.ny.us □

GROSS INCOME TAX

Investment Clubs

The Division has received several telephone inquiries from investment clubs inquiring where to

deduct their expenses related to portfolio income on their Partnership Return, Form NJ-1065.

N.J.A.C. 18:35-1.3 defines a partnership as “a syndicate, group, pool, joint venture and any other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a corporation, trust or estate within the meaning of the New Jersey Gross Income Tax Act. Only entities that qualify for and elect to be treated as partnerships for Federal tax purposes (for example, Limited Liability Companies and Limited Liability Partnerships) and are in business shall be treated as partnerships under the Gross Income Tax Act.”

An investment club is generally not considered to be in business if its main source of income is interest, dividends, and gains on disposition of its stock and securities. The activities of an investment club are treated essentially in the same manner as the activities of an individual investor. Individual investors must report their investment income in the respective categories of income on their New Jersey Gross Income Tax returns and are not allowed deductions against their portfolio income, unless specifically allowed.

Accordingly, an investment club is not required to file a New Jersey Partnership Return, Form NJ-1065, unless it constitutes a business. Instead its members are required to report their share of the club's income, per their Federal Schedule K-1, in the appropriate category of income on their New Jersey Gross Income Tax returns.

continued on page 5

Fall 2000

investment clubs - from page 4

If an investment club constitutes a business, the club must file Partnership Return, Form NJ-1065, and can deduct its expenses that meet the criteria of an ordinary business cost or expense as outlined in N.J.A.C. 18:35-1.1(d)1. □

INHERITANCE TAX

Executor Commissions

The Governor recently signed legislation (P.L. 2000, c.29) which amended N.J.S.A. 3B:18-14 and affects the manner in which the Division determines the executor's commissions allowable as a deduction for Transfer Inheritance Tax purposes. The New Jersey Administrative Code (N.J.A.C. 18:26-7.10) will be amended to reflect these changes.

The statute as amended now provides that commissions on all corpus received by the fiduciary may be taken as follows:

- 5% on the first \$200,000 of all corpus received by the fiduciary;
- 3.5% on the excess over \$200,000 up to \$1,000,000;
- 2% on the excess over \$1,000,000; and
- 1% of all corpus for each additional fiduciary provided that no one fiduciary shall be entitled to any greater commission than that which would be allowed if there were but one fiduciary involved.

The Internal Revenue Service has taken the position that it is not bound by the provisions of N.J.S.A. 3B:18-14 unless a court has approved the allowance of executor commissions. Current

practice in New Jersey is to refrain, except in extraordinary circumstances, from incurring the additional costs and delay of submitting an executor's accounting for judicial approval. A court determination as to the allowance of executor's commissions is rare. In order to allow practitioners the ability to administer estates with greater certainty, the statute has been amended to clarify that a fee calculated pursuant to the provisions of N.J.S.A. 3B:18-14 is the normally appropriate commission and that a court determination is necessary only if a beneficiary objects to the statutory fee calculation.

The calculated commissions may be reduced by the court having jurisdiction over the estate only upon application by a beneficiary adversely affected upon an affirmative showing that the services rendered were materially deficient or that the actual pains, trouble and risk of the fiduciary in settling the estate were substantially less than generally required for estates of comparable size.

The act was signed by the Governor on June 16, 2000 and took effect immediately. For Transfer Inheritance Tax purposes, it will apply to the estates of decedents passing away on or after its effective date. □

Discovery Contract Expires

The Delinquent Tax Discovery Services contract, which the Division of Taxation entered into in March 1995, officially expired on July 28, 2000. Under the contract, MBIA Muniservices (formerly Municipal Tax Bureau (MTB) and the

Law Offices of Nicholas Panarella) was authorized to "discover" businesses and individuals delinquent in filing returns for Corporation Business, Sales and Use and/or Gross Income Tax, and to collect the associated tax due.

The 5-year contract resulted in the "discovery" of 5,600 delinquent taxpayers and the collection of more than \$20 million in delinquent taxes, interest and penalties. Collections were predominantly for the individual gross income tax (62%) followed by the corporation business tax (26%) and the remainder (12%) for sales and use and employer gross income tax. □

SALES AND USE TAX

Hazardous Waste Pickup Service

During the course of an audit of a taxpayer's records it was noted that there was a general misunderstanding regarding the taxability of hazardous waste pickup service.

N.J.S.A. 54:32B-3(b)(4) of the Sales and Use Tax Act imposes sales tax on the receipts from the services of maintaining, repairing or servicing real property. Garbage and trash removal services fall within the meaning of this section of the law. However, the law does provide an exemption from tax for receipts related to garbage and trash removal whenever these services are performed on a "regular contractual basis for a term of not less than 30 days."

Under N.J.A.C. 18:24-13.2, trash includes garbage or rubbish. "Removal" includes only the operation of picking up and physically removing contained

continued on page 6

hazardous waste - from page 5

waste from the premises and does not include activities related to maintaining or servicing property or any processing of the waste. Examples of trash removal services include a private company picking up garbage at a house or picking up industrial sawdust at a plant. N.J.A.C. 18:24-13.2 does not distinguish between hazardous and nonhazardous contained waste.

Accordingly, the service of *picking up and removing* hazardous or nonhazardous waste, (i.e. chemical drums, contaminated dirt, fluorescent bulbs, sludge, etc.) is subject to tax unless the service is performed for the same customer on a regular contractual basis for a term of not less than 30 days. This service must be performed at least once a month for consecutive months in order for the exemption to apply.

For sales tax purposes, a distinction is made between trash removal services as described above, and services performed on real property which constitute a capital improvement to the property; for example, removing asbestos from a building or excavating contaminated soil or removing an underground tank. □

Weigh Stations

When you see truckers pulling into a weigh station, an area utilized by the State Police to check the weight and safety conditions of trucks on our major highways, did you know that New Jersey Division of Taxation personnel are hard at work too?

Investigators from the Investigations Special Projects Unit have been working with the State Police for several years at these stations

to identify unregistered, out-of-State vendors with New Jersey "nexus." Nexus occurs when business activities create tax consequences. Investigators interview the operators of these vehicles and review invoices to determine if nexus exists.

In many cases Taxation personnel determine that a Jeopardy Assessment is appropriate. This determination can be made when the taxpayer may quickly depart the State and make collection of the tax doubtful. Investigators issue Warrants of Execution – Jeopardy Assessment and make demand for immediate payment. Failure to make payment can result in the seizure of the vehicle and its contents. Payment of these assessments is often done by bank-to-bank wire transfers.

To date Taxation has collected approximately \$11 million from the weigh station and other Nexus Compliance projects. □

Federal Offset Program

The Financial Management Service (FMS), the branch of the Fed-

eral Treasury Department that administers the Federal Offset Program, recently conducted a seminar in Washington, D.C. for all states that intend to or are already participating in this program. Almost every state sent representatives to the seminar — New Jersey sent five — representing enforcement and collection areas and internal system units within the Division of Taxation.

The Federal Offset Program allows states that have taxpayers who owe personal income tax to send information to the Federal government and receive any Federal income tax refund to apply against the state debt. This program has been very successful in a small, controlled pilot project conducted during the spring of 2000 by New Jersey. This State collected over \$1,162,000 on 10,000 submitted accounts. New Jersey expects to expand this program next year to submit all outstanding gross income tax debts to the program. Federal refunds offset for the seven states participating in the pilot program amount to over \$21,000,000. □

Taxpayer Accounting Branch

In its most simple terms, the Mission Statement of the Taxpayer Accounting Branch is to review bills and refunds and answer taxpayer correspondence, so that taxpayers can pay what they owe, receive what is due to them, and correct any errors in their accounts.

Most bills and refunds issued by the Division of Taxation are automatically computer-generated. Some may be flagged for review, based on certain predetermined criteria, which are in place to pre-

2000 Package NJX

See the order blank on page 23 to order your copy of *Package NJX*. The publication is available in print and on CD ROM. The CD ROM version, *NJX PLUS*, contains many useful tax information publications in addition to reproducible tax forms. Three-ring binders capable of holding several volumes of the printed version can be purchased separately.

vent erroneous bills and refunds from being sent to taxpayers. These flagged bills and refunds are reviewed and corrected by the Taxpayer Accounting Branch.

When taxpayers dispute a bill or discover a discrepancy with the amount of refund received, their correspondence should be sent to the Taxpayer Accounting Branch. All letters received from taxpayers in response to any notices are reviewed. When the information necessary to correct an account is received, Taxpayer Accounting staff will adjust the account and notify the taxpayer that the problem has been resolved.

When a taxpayer responds to a notice or corresponds with the Division for any other reason, it is very important to provide as much information as possible both as to the identity of the taxpayer and the nature of the problem. In order for the Taxpayer Accounting Branch to respond to a taxpayer, all correspondence should include:

1. Full name and identification number of the taxpayer as it appears on the Division notice;
2. Tax type and period in question;
3. Nature of the problem;
4. Taxpayer's phone number; and
5. Taxpayer's current address.

When a taxpayer or his representative responds to a notice, the correspondence should be sent to the Post Office Box shown on the notice. This insures that it gets to the office that initiated the notice and is best suited to resolve the problem.

In Fiscal Year 2000, Taxpayer Accounting personnel:

- Responded to nearly 120,000 pieces of correspondence;
- Reviewed more than 68,000 bills and almost 47,000 refunds;
- Collected more than \$4 million; and
- Made almost 290,000 adjustments or corrections to accounts.

Additionally, Taxpayer Accounting is, and will continue to be, very heavily involved in the Property Tax Reimbursement, NJ SAVER Rebate, and Homestead Rebate programs, and staffs Tax Practitioner Hotlines for tax practitioners who are unable to resolve client problems through normal channels. □

Practitioner Institutes

New Jersey commercial tax preparers are invited to the Practitioner Institutes sponsored by the New Jersey Division of Taxation, the Internal Revenue Service, the New Jersey Association of Public Accountants (NJAPA), and cooperating colleges. The one-day institutes begin November 8 and end in mid-December and are geared toward the intermediate and advanced tax preparer.

The topics presented by the New Jersey Division of Taxation are:

- Property Tax Relief – Homestead Rebate and NJ SAVER Programs
- Sales Tax
- Passive loss treatment (income tax)

- Options - tax treatment (income tax)
- Credit for taxes paid to other jurisdictions (income tax)
- 2000 Tax Updates
- Doing Business with the State of New Jersey

The topics presented by Internal Revenue Service are:

- Tax treatment of debt cancellation – 1099A and 1099C
- Divorce – tax treatment (overview)
- Options – tax treatment
- Tax consequence of early retirement benefits
- 2000 Tax Update
- Doing Business with the IRS

Each session begins promptly at 8:30 a.m., includes lunch, and concludes at 3:30 p.m. Registration desks will open and coffee will be served at 8:00 a.m. Six CPE credits will be issued in taxation to those who complete the session.

The pre-registration fee for commercial tax preparers is \$75 (\$15 for full time students, ID required). Those who register at the door will be required to pay a \$90 fee. In order to qualify for the lower remittances, payment must be received no later than one week before the scheduled seminar. There will be no refunds, however, you can reschedule for another location. The locations, dates and registration form appear on page 8.

□

2000 Practitioner Institutes Schedule

DATE	CITY	LOCATION	COORDINATOR
Nov 8	Mays Landing	ATLANTIC COUNTY COLLEGE Room J-206	David Matagiese (609) 522-6012
Nov 13	Piscataway	RUTGERS UNIVERSITY Busch Campus – Student Center	Stuart Simon (732) 679-6363
Nov 16	Montclair	MONTCLAIR UNIVERSITY Student Center	Chris DiCicco (201) 445-1027
Nov 18	Randolph	COUNTY COLLEGE OF MORRIS Auditorium – Student Center	Frank Cerny (973) 777-1124
Nov 29	Sewell	GLOUCESTER COUNTY COLLEGE Auditorium – Student Center	Nancy Ritchie (609) 387-2127
Dec 14	Union	KEAN UNIVERSITY	Alice Weinstein (973) 379-3275
Dec 15	Lakewood	GEORGIAN COURT COLLEGE The Casino (Gym)	Joseph Mastromonaco (732) 240-7355
Dec 18	Trenton	COLLEGE OF NEW JERSEY Student Center – Room 202 West	John Duffy (609) 586-1990

2000 Practitioner Institutes Registration

Fee \$75 – Pre-Registration

Detach and Mail to:

(Make check payable to NJAPA)

New Jersey Association of Public Accountants

Attn: Niles Breslau

101 N. Washington Place, Suite 1B

Margate, NJ 08402 TEL: (609) 823-9103

Name of Attendee	Firm or Company Name
Business Phone	Student (Check one) <input type="checkbox"/> Yes <input type="checkbox"/> No
Firm or Company Address	
City	State
Zip Code	
College Location	Amount Remitted

LOCAL PROPERTY TAX *Excluded Sales & Equalized Values*

The following is a review and clarification of the Division's practices concerning the exclusion of certain sales from the Table of Equalized Valuations based upon the nonusable 06 category. The nonusable category 06 refers specifically to transactions that convey only a portion of the assessed unit. This conveyance is usually referred to as an apportionment, split-off, cut-off, or subdivision; for example, a parcel sold out of a larger tract where the assessment is for the larger tract. In order to support a nonusable claim of this nature the Division of Taxation's Assessors Handbook (Exhibit X-9F) states that an assessor must show in Section Two on the SR-1A the following:

1. Date of the split-off (approved subdivision);
2. Number of the new lots created by the split-off;
3. Size of the new lot conveyed from the deed;
4. Source of the information.

Frequently, however, the proper information regarding these sales is not set forth in Section Two of the SR-1A. Often an assessor will insert the block and lot numbers which will be given in the future to that portion of the original property being conveyed. The assessor should always insert the current block and lot numbers which appear in the present tax list; that is, the block and lot number should be that of the whole original parcel assessed. Additionally, the assessor should use the original assessment for the entire parcel assessed and not substitute the new assess-

ment which will be given to the particular property that is conveyed.

At times questions arise concerning sales which were reclassified or have not been given a nonusable 06 status by the Division. One example where a nonusable 06 designation is sometimes misapplied is in the classification of roadway acquisitions by State, County or Municipal agencies. When land is dedicated for road expansion, sidewalks, and other roadway purposes, the portion of the original lot that is split off should be classified as a nonusable 15, sales to a governmental entity.

Another way that the nonusable 06 category is erroneously applied concerns the transfer of property that was previously split off for roadway improvements. If the sale of minor portions of a property for roadway or easement purposes does not significantly affect the assessed value of the remaining parcel, then a subsequent sale of that parcel cannot be excluded under the nonusable 06 designation. For example, a town is increasing the width of a street by ten feet and the average depth of a lot is 200 feet. The assessor deducts five (5) feet of depth from the properties on both sides of the street to reflect that modification. After a review of the market data, the assessor determines that no changes to the current assessed value are justified. Because the changes to the property did not significantly affect its value, a sale after this split-off would not qualify for the nonusable 06 designation. If an assessor claims this exclusion on the basis of a split-off, evidence of a substantial change in the assessed value needs to be documented.

Specific concerns arising from this policy statement on the nonusable 06 category that require further clarification should be directed to the Local Property Section within Property Administration at 609-984-3466. □

LOCAL PROPERTY TAX *Co-op/Continuing Care Properties*

As the result of cooperation of 215 co-operative housing corporations and continuing care facilities throughout New Jersey, the Property Administration Branch of the Division of Taxation was able to effectuate a complete update of all existing co-op/continuing care files for the NJ SAVER Rebate Program.

Some 7,400 changes were made to the co-op/continuing care database, which entails 32,000 housing units. These updates enable eligible property owners to file their NJ SAVER Rebate applications by telephone or online through the Division of Taxation Web site, as can most other New Jersey homeowners.

Co-operative housing corporations and continuing care facilities, although responsible for property taxes, are transferred and ultimately assessed in a different manner than other residential dwelling units. Rather than recording a deed at the County Clerk's office indicating a real estate transfer, these properties are bought and sold via privately held stock plans. The assessment of these types of structures is done in the aggregate rather than by individual block and lot. The names, addresses, etc. of new

continued on page 10

co-ops - from page 9

owners are controlled internally, usually by a Property Management Company. □

LOCAL PROPERTY TAX

Tax Maps

Tax maps submitted to Property Administration, Local Assessment Compliance for revaluation purposes are required to be current. A current tax map is one that has every deed, major and minor subdivision, and condominium unit plotted by the New Jersey Licensed Land Surveyor responsible for making revisions. The municipal tax assessor is responsible for providing the surveyor with the necessary deeds and subdivision maps. Each sheet must comply with the latest regulation in the New Jersey Administrative Code 18:23A-1 et seq., as far as lot and block numbering system and all lot

and block required details. No tax map will be approved without an up-to-date revision block indicating the date of latest revision, name of the responsible land surveyor and New Jersey license number. In addition to the revision block an up-to-date "To show conditions as (date)" statement must be shown on the Key Map. Other items checked are legibility; properly marked block limits indicated with heavy solid lines; details of condominiums; details of riparian lands; proper railroad names, limits, and classification of railroad property as assessed by the State; sufficient dimensions for each lot and acreage for lots over one acre. This office is not limited to the above items.

Prior to revaluation the tax assessor should review the tax map with his surveyor based on the guidelines stated above. This will provide for an orderly and expeditious

approval of the tax map.

Local Assessment Compliance will reject any tax map from the examination process which, in its opinion, has not been adequately checked for compliance with the regulations by the surveyor. Such rejection will delay inspection and approval for revaluation.

Regular communication between the tax assessor, the surveyor, and Local Assessment Compliance is imperative when tax map matters are not clear for proper compliance with the requirements.

The tax assessor may request the latest edition of the administrative code entitled, "Tax Maps, Regulations and Standards, February 1996" by contacting our office at 609-292-5327. □

LOCAL PROPERTY TAX

Assessor and County Tax Board Compliance Units

The Local Assessment and County Tax Board Compliance Units were created in Property Administration in 1997 and charged with reviewing the statutory, administrative, and procedural responsibilities of tax administrators, tax board commissioners, and assessors.

In the past three years the Local Assessment Compliance Unit, under the direction of Jim Coll, has conducted periodic inspections of assessors' offices for compliance with statutory responsibilities. It has conducted reviews of assessors' offices to determine if municipal assessors have adequate staffs and equipment to carry out the administrative functions of

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compliance units - from page 10

their positions. This group has worked with the Department of Treasury to perform Local Government Budget Reviews of municipal tax assessment offices to determine if assessment offices are managed in a fiscally responsible manner.

Local Assessment Compliance contains two additional units. The Railroad Property Unit classifies, assesses and taxes railroad properties and assesses and computes railroad franchise tax. The Tax Maps Unit reviews and approves municipal tax maps for conformity to current specifications and as required for municipal revaluations.

Under the direction of Patty Wright, the County Tax Board Unit reviews county procedures for adherence to the statutes, administrative code, and official State policies; gives written directives, revises official forms, and provides tax boards with current information on State programs such as the Regional Efficiency Aid Program (REAP). Its personnel attend tax board meetings and appeal hearings to see that all taxpayers are treated with uniformity. A biannual newsletter, established this year, keeps county officials informed of pertinent legislation such as the Recertification law, as well as judicial decisions and current policies.

In 1997, the Director of the Division of Taxation instituted the use of the Certificate of Outside Employment (Form OE-1) to review the job-related activities of local tax officials. The County Tax Board Compliance Unit issued OE-1 forms to local taxing officials that year. Assessors forwarded completed forms to the county board of taxation offices that maintain them as a public record. County tax administrators, tax board commissioners and tax board staff members have filed their OE-1s with the Division of Taxation. This group completed its initial review of the OE-1 forms in all county tax boards in 1998 to ascertain any potential conflicts of interest that appear. As commissioners are State employees, their OE-1 filings are forwarded to the New Jersey Executive Commission on Ethical Standards.

The Local Assessment Compliance group investigates potential conflicts of interest proactively. Conflicts of interest that hinder the uniform application of the law are serious matters. The Division's objective is to ensure that all taxing officials remain fair, unbiased and objective in the discharge of their statutory duties. Upon discovery of a potential conflict of interest, this Unit arranges a meeting with the official in question to determine if an actual conflict exists. Often, the official is found not to have a conflict of interest and the issue is concluded. Subsequent interviews may determine, however, that an assessor's conflict of interest must be settled. If this cannot be accomplished

administratively, either the assistance of the Attorney General's Office is requested or the issue is resolved judicially. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

October 1-

- All real property in taxing district valued for tax purposes (pretax year).
- \$100 veteran's tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1-

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15-

continued on page 12

assessors' calendar - from pg. 11

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1-

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for omitted assessments, whichever is later.

December 31-

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veteran's deductions and property tax deductions for 2001 must be filed with assessor, thereafter with collector during the tax year. □

LOCAL PROPERTY TAX

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Nineteen persons passed the examination for the tax assessor

certificate held on March 25, 2000. Sixteen persons became certified tax assessors on June 1, 2000. They are as follows:

Atlantic County: Barbara Y. Saccoccia, Brigantine City.

Bergen County: Kathleen Winston, East Rutherford Borough.

Burlington County: Jay A. Garnier, Moorestown Township; Patricia F. Sporer, Eastampton Township; Joan M. Wiest, Maple Shade Township.

Camden County: Annabelle D. Naidas, Collingswood Borough; Michael T. Raio, Gloucester Township.

Cumberland County: Patricia A. Belmont, Vineland City; Mitsuko Key, Millville City.

Gloucester County: Anthony J. Colavecchio, Monroe Township.

Hunterdon County: Laura Whitaker, Milford Borough.

Monmouth County: James P. Casey, Spring Lake Heights Borough; Holly Reycraft, Freehold Township.

Morris County: Konstantin Belenky, Montville Township.

Somerset County: Catherine A. Gantner, Raritan Borough.

Sussex County: John B. Gisler, Fredon Township. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On April 7, 2000, Stanley W. Hudson of Monmouth Beach, New Jersey, was sentenced to three (3) years probation and made a restitution payment of \$24,928 in connection with his guilty plea of tax evasion. Mr. Hudson had plead guilty to one (1) count of Failure to Pay Over Personal Gross Income Tax in the amount of \$24,928 for the years 1993 through 1996. This case was jointly investigated by the Office of Criminal Investigation and the Monmouth County Prosecutor's Office.
- On April 12, 2000, Arcadio Aneliz of Vineland, New Jersey was named in a thirteen (13) count indictment by a Cumberland County Grand Jury. The indictment involved charges relating to selling cigarettes not bearing the required revenue stamp, for which the defendant was immediately fined \$14,885: Failure to File Payroll Returns for 1996 and 1998, Failure to Pay Over Gross Income Tax in the amount of \$11,887, and Filing Fraudulent Gross Income Tax Returns for the year 1997. This indictment resulted from a joint investigation that was conducted by the Cumberland County Prosecutor's Office and the Office of Criminal Investigation.
- On April 12, 2000, during the course of an investigation in Hudson County, New Jersey, a new type of counterfeit cigarette tax stamp was found. A total of

continued on page 13

17.8 cartons of export cigarettes were seized with counterfeit New Jersey tax stamp affixed to the packs. This is the first incidence of a "stick-on" adhesive type stamp. This investigation is continuing.

- On May 1, 2000 in Hudson County Superior Court, George J. Halpern of Short Hills, New Jersey, entered a plea of guilty to one (1) count of failing to file a 1997 New Jersey personal income tax return in connection with his business as a tax preparer for numerous small businesses and individuals. Mr. Halpern has already made restitution of \$24,843 in tax, with penalty and interest outstanding. In the same proceeding Mr. Halpern's son, Todd P. Halpern, of West Orange, New Jersey, entered a plea of guilty to filing a fraudulent 1997 New Jersey personal income tax return (phony W-2s) on his share of income from his father's business. Todd P. Halpern has made full restitution of \$2,682 in tax, penalty and interest. This case was referred to the Office of Criminal Investigation (OCI) by the Division's Audit Activity Branch. The case was investigated by OCI with the substantial assistance by Taxation's Audit Activity and Investigations Branch, and was prosecuted by the Attorney General's Office.
- On May 17, 2000, Operation "Boilermaker" targets Christopher Grungo of Burlington, New Jersey, and Brenda Grungo of Shamong, New Jersey, were sentenced in response to their guilty pleas regarding a scheme

to evade the payment of \$158,000 in Petroleum Products Gross Receipts Tax from the period of December 1992 through May 1993. Christopher Grungo was sentenced to five (5) years incarceration in State prison and ordered to make restitution of the \$158,000 of Petroleum Products Gross Receipts Tax. Mr. Grungo was sentenced in response to his guilty plea of Racketeering involving Misapplication of Entrusted Property. Brenda Grungo was sentenced to five (5) years probation and ordered to make restitution in the amount of \$50,000 of Petroleum Products Gross Receipts Tax. Ms. Grungo was sentenced in response to her guilty plea of Theft by Failure to Make Required Disposition.

- Norberto Espinal and Antonia Oviedo both of New York City were convicted of Possession of more than 2,000 Contraband Cigarettes, a crime of the 4th degree, and Possession of Counterfeit Stamps, and Forgery Devices, crimes of the 3rd degree. Judge Frederick DeVesa JSC, Middlesex County, sentenced both subjects to five (5) years of Intensive Supervision Probation. Both subjects served five (5) days in the Middlesex County Jail. A third subject, Carlos Lopez, was permitted to enter the Pre-Trial Intervention Program. All three were arrested in March 1999 by the Office of Criminal Investigation during the execution of a search warrant at a contraband cigarette/counterfeit stamp operation in Perth Amboy, New Jersey.
- Eyad Mohammed Bader and Osama Mohamad Jamhour were

recently indicted by a Hudson County Grand Jury. Both defendants were arrested for Possession of Stolen Property, a 2nd degree crime, Possession of more than 2,000 Unstamped Cigarettes, a 4th degree crime, Transportation of Contraband Cigarettes, No Licenses and No Invoices, which are Disorderly Persons Offenses. The 5,400 cartons of unstamped cigarettes which were seized from the subjects by the Office of Criminal Investigation (OCI) were the proceeds of a hijacking in Illinois. OCI has cooperated with the FBI, ATF, and the U.S. Attorney's Office (Illinois) in this case.

- On June 8, 2000, a saturation enforcement sweep in the Township of Cherry Hill, New Jersey was conducted for the purpose of determining compliance with the Cigarette Tax Act and other taxes and licenses administered by the New Jersey Division of Taxation. Thirty-five (35) investigations were conducted resulting in a total of eighteen (18) violations, including four (4) seizures of contraband cigarettes.
- On June 12, 2000, Anthony Foti, owner of An-Jo Car Company, Inc., plead guilty in Ocean County Superior Court to an accusation of Failure to Turn Over Taxes in the amount of \$76,184. Mr. Foti acknowledged that he had collected and failed to remit Sales Tax totaling the above amount while operating his used car dealer-

continued on page 14

criminal enforcement - from pg. 13

ship located in Toms River, New Jersey. This case was jointly investigated by the Office of Criminal Investigation and the New Jersey Division of Criminal Justice with assistance from the New Jersey Division of Motor Vehicles.

- On June 16, 2000, the Attorney General's Office obtained a Superior Court order that Bernard Mondry be confined at Trenton State Psychiatric Hospital for up to thirty (30) days to determine whether he is competent to stand trial with co-defendant Naum Raichel for conspiracy to evade/commit theft of \$85,000 in motor fuel tax.
- On June 22, 2000, Ahmed O. Mohammed of Brooklyn, New York was arrested by the Office of Criminal Investigation (OCI) when he was observed loading his vehicle with contraband cigarettes from a storage unit in Fairview, New Jersey. OCI and members of the New York City Department of Finance Office of Tax Enforcement had Mohammed under surveillance. OCI rented a storage unit at the same location that Mohammed

was storing his contraband cigarettes. A total of 1,166 cartons of Virginia stamped cigarettes were seized as well as \$4,743 in cash. The subject has been charged with Possession of more than 2,000 Contraband Cigarettes, a 4th degree crime, and Transportation of Contraband Cigarettes, No Invoices and No Consumer License, all Disorderly Persons Offenses. The subject was remanded to the Bergen County Jail in lieu of \$15,000 cash bail, no 10%.

- Eight-five (85) complaints alleging tax evasion were evaluated from April to June 2000.

From April to June 2000, one hundred and one (101) charges were filed in court on twenty-seven (27) cases for violating the Cigarette Tax Act including possession of 1,665.2 cartons of contraband cigarettes, valued at \$56,617 and resulting in twenty-four (24) arrests. □

Tax Briefs

Corporation Business Tax Federal Disabled Access Credit —

The Division replied to an inquiry about the Federal disabled access

credit under IRC 44. Under that credit, an eligible small business is entitled to a nonrefundable disabled access income tax credit for expenditures incurred to make a business accessible to disabled individuals. The amount of the credit is 50% of the amount of eligible access expenditures for a year that exceed \$250 but do not exceed \$10,250.

For New Jersey purposes if an election is made to take a Federal credit rather than to take a deduction for an otherwise deductible expense, the deduction may not be taken for New Jersey purposes. *AT&T v. Director*, 13 N.J. Tax 534 (1993).

Where, for example, a Federal election is made to take a credit for an amount paid to acquire or modify equipment or devices for disabled individuals, the same basis should be used for depreciation for New Jersey as for Federal purposes. N.J.S.A. 54:10A-4(k)(2)(F)(i). New Jersey depreciation is not uncoupled from Federal depreciation for property placed into service during accounting periods beginning on or

continued on page 15

Enforcement Summary Statistics Second Quarter 2000

Following is a summary of enforcement actions for the quarter ending June 30, 2000.

• Certificates of Debt:		• Jeopardy Seizures	5
Total Number	1,379	• Seizures	36
Total Amount	\$26,412,240	• Auctions	7
• Jeopardy Assessments	241	• Referrals to the Attorney General's Office	761

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

tax briefs - from page 14

after July 7, 1993. This principle should be applied consistently as well as at the time of the sale of property.

NYC Commercial Rent or Occupancy Tax — The New York City Commercial Rent or Occupancy tax is an annual levy imposed on tenants of premises occupied, used, or intended to be occupied or used for the purposes of carrying on or exercising any trade, business, profession, vocation, or commercial activity. Rentals exclusively for residential or nonbusiness purposes are exempt. Tax is measured by a tenant's base rent and is imposed for tax years running June 1 through May 31.

The New Jersey tax add back statute which was amended by P.L. 1993, c.173, now refers to taxes "measured by profits or income, or business presence or business activity." The New York City Commercial Rent or Occupancy tax is deemed measured by business presence and is therefore to be added back. The CBT-100 instruction 16(f) was updated to reflect the statutory revision.

Nexus Independent Contractors — For sales tax purposes the in-State activities of an independent contractor (agent) would make the out-of-State seller subject to registration with the Division of Taxation. See definition of "vendor" N.J.S.A. 54:32B-2(i) and "person required to collect the tax" N.J.S.A. 54:32B-2(w).

For corporation business tax purposes independent contractors may solicit or make sales or maintain an office in New Jersey without subjecting the out-of-State principal company to liability for tax

based on or measured by income. Sales representatives who represent a single principal would not be considered independent contractors. A foreign corporation would be subject to income-based tax if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation. N.J.A.C. 18:7-1.9(e).

Patronage Dividends from a Cooperative (New Jersey) — Corporation A is a member patron of a cooperative and does business with the cooperative during the year. The cooperative distributes patronage dividends to Corporation A at the end of the year under IRC 1388. Under IRC 1385 Corporation A would include the dividend in gross income but not deduct it under IRC 316.

For New Jersey purposes, the patronage dividend would be considered business income to Corporation A. This is implicit in the notice in *New Jersey State Tax News*, May/June 1991, p. 57, which discussed aspects of this issue, as did the Nov/Dec 1983 issue at p. 164.

Second, as noted in the Nov/Dec 1983 *New Jersey State Tax News*, p. 164, the patronage dividend is not a dividend within the meaning of the dividend deduction.

Third, the Division would consider that the patronage dividend is in the nature of "return or allowance" and should be shown as such as a reduction in the cost of goods sold. This would be reflected on Line 5, Schedule A-2, Form CBT-100, and noted on Line 2, Schedule A, of Form CBT-100. In this fashion the patronage dividend would not be sourced independently of the gross receipts to which it relates.

Gross Income Tax

Taxability of Employer

Contributions to a SEP Plan — The question of the excludability from gross income of employer contributions in a Simplified Employee Pension (SEP) was decided by the New Jersey Tax Court in the case of *Richard and Janet Mutch v. Division of Taxation*, 9 N.J. Tax 612 (1988). In this case, the Tax Court found that once the contributions were deposited into the taxpayer's SEP account, ownership of the funds was effectively transferred to the employee. The employer had no control or claim over the SEP account and the taxpayer could withdraw the funds at any time. In addition, the limitations on such a withdrawal (i.e. possible 10% early withdrawal penalty tax for those under age 59½ and funds can only be taken at one-year intervals) was not sufficient to overcome the fact that there was receipt of the contribution when it was made. Thus, the employee has constructive receipt of employer contributions made to the SEP account. For this reason it must be included in the employee's gross income in the year the contributions are made.

Credit Card Unemployment

Insurance — Under the New Jersey Gross Income Tax Act, New Jersey gross income includes only amounts from specifically enumerated sources as set forth in the sixteen categories of gross income pursuant to N.J.S.A. 54A:5-1. Under N.J.S.A. 54A:5-1, payments received pursuant to an unemployment insurance agreement with a credit card company do not fall into any of the enumer-

continued on page 16

ated categories of income.

Therefore, the unemployment insurance benefits a person receives from a credit card company for making credit card purchases is not considered taxable income for New Jersey purposes.

Sales & Use Tax

Horse-Keeping Businesses — The Division has received several inquiries from businesses that are primarily engaged in the business of boarding or training customers' horses, renting horses for recreational trail riding, and leasing horses to customers for longer periods. The businesses have asked whether they might be eligible to claim the farming use exemption from sales tax.

The farming use exemption from sales and use tax applies to the purchase of qualified tangible personal property (*not* including automobiles, energy, or materials used to construct a building or structure, with a few exceptions) and services that are used directly and primarily in the production, handling, or preservation for sale of agricultural commodities on farms. The scope of this exemption is based on the language of N.J.S.A. 54:32B-8.16, which is part of the Sales and Use Tax Act. The business of boarding and training horses and renting horses to customers is *not* an agricultural *production* business for the purposes of this statute. Therefore, it is not eligible to claim exemption under N.J.S.A. 54:32B-8.16.

It is quite possible that the activities of a business might be statutorily deemed "agricultural use" for purposes of local property tax law, and thus qualify the land for farm

land assessment, and the business not qualify as a "farming enterprise" within the meaning of the Sales and Use Tax Act by reason of the wording of N.J.S.A. 54:32B-8.16. If a business is primarily engaged in boarding or training customers' horses and in renting horses to customers for trail riding, it is not primarily engaged in *producing* an agricultural product. Therefore, although it may be viewed as a farm for property tax assessment purposes, it does not qualify for the farming use exemption from sales tax.

A business that is primarily engaged in breeding and raising horses for sale is, however, treated as a "farming enterprise" for sales tax purposes; the horses that it breeds and raises for sale are deemed to be an agricultural "commodity." Thus, a horse breeding farm is eligible for the farming use exemption when it purchases qualified tangible personal property (e.g., feed) or services (e.g., shoeing) used in raising its horses for sale.

While a business that boards horses or rents horses to customers may be ineligible to claim the farming use exemption from sales tax, it does need to register as a vendor. Many of its transactions will be taxable and the business will be required to collect sales tax. Charges for boarding horses are taxable unless a statutory exemption applies under the specific factual circumstances. For example, if the business boards horses for a horse dealer who is in the business of selling these horses, the dealer may use a Resale Certificate (ST-3) and claim a resale exemption from sales tax. If it boards horses for a horse breeder, i.e., a farmer who is in the

business of raising and breeding horses for sale, or if it boards a plow horse for a farmer who uses the horse for farm work, these farmers may use a Farmer's Exemption Certificate (ST-7) and claim the farming use exemption from sales tax. (However, it appears unlikely that horse dealers or farmers would board their horses off their own premises.)

If, instead of charging a lump sum for boarding, the business itemizes the sales and services provided as part of boarding, the following general rules will apply. Separately stated charges for stall rental are exempt from sales tax for any customer. Stall rental is treated as the rental of space, which is essentially a real estate transaction and therefore not subject to sales tax. Charges for feeding the horses are viewed as taxable charges for the sale of tangible personal property, N.J.S.A. 54:32B-3(a), and are subject to tax unless the customer is entitled to claim a specific statutory exemption as explained above (e.g., farm use for a breeder, resale for a dealer). Separately stated charges for grooming or shoeing horses are taxable as charges for maintaining tangible personal property, N.J.S.A. 54:32B-3(b)(2), unless the customer is entitled to a specific statutory exemption as explained above.

Charges for training horses are treated as nontaxable charges for professional services. They remain nontaxable even if some grooming is provided as an inconsequential element of the training service. N.J.S.A. 54:32B-2(e)(4)(A).

When a business that provides

continued on page 17

riding horses to customers charges customers who borrow horses by the hour or by the day for trail riding, it is deemed to be renting horses to them. Since these rentals are treated as retail sales, N.J.S.A. 54:32B-3(f), the amounts charged for use of the horses are subject to tax. If a business provides horses to customers for much longer periods – contract periods of longer than 28 days – the business, as the lessor, is subject to the lessor's use tax which is calculated on either its purchase price for the horse or the total value of the lease. N.J.S.A. 54:32B-2(bb).

Although a horse boarding, training, and rental business is not eligible for the farming use exemption, it is eligible to claim a resale exemption when it purchases horses that it uses for rental to customers. N.J.S.A. 54:32B-2(e)(1)(A). However, if it ever uses some of those horses to give riding lessons or for any other purpose that does not constitute "resale," it will then be liable for compensating use tax on the fair rental value of those horses which it purchased tax-free and used for a purpose inconsistent with resale. N.J.S.A. 54:32B-6.

The business is also entitled to a resale exemption when it purchases feed for the horses that it boards. N.J.S.A. 54:32B-2(e)(i)(B). However, it may not claim the resale exemption when it buys feed for the horses that it trains (unless it charges the customer separately for the feed). This is because training is a nontaxable service and when the feeding is just incidental to the training service and no separate charges are made for the feed, the

trainer is deemed to be the retail purchaser of the feed. See N.J.S.A. 54:32B-2(e)(4)(A).

Motor Vehicle Sales to Farmers

— A farmer may use the Farmer's Exemption Certificate (ST-7) when purchasing equipment, for example, a farm tractor, that is used *directly* and *primarily* in the process of growing, producing, or raising farm products on a farm for the purpose of sale. N.J.S.A. 54:32B-8.16. A "farm tractor" is not designed primarily for road use and not required to be registered with Motor Vehicle Services.

If instead the farmer is purchasing a truck tractor or other commercial truck with a manufacturer's gross vehicle weight rating of more than 18,000 pounds, which is being registered with Motor Vehicle Services pursuant to N.J.S.A. 39:3-24 or N.J.S.A. 39:3-25 as a farm vehicle, then the appropriate certificate to use is the Exempt Use Certificate (ST-4). See N.J.S.A. 54:32B-8.43. The ST-7 may not, under any circumstances, be used when purchasing a passenger automobile or similar vehicle.

Sale of Depositions or Hearing Videotape to Law Firm

— A most difficult transaction in sales and use tax administration is the "mixed" transaction where the vendor provides services accompanied by the transfer of property. The Division must look to the consequentiality of the property to determine the tax consequences. In the case of photographers and videotape producers, the Division takes the position that the overriding purpose of the customer is to obtain the photo, videotape etc. Such transactions are taxable as the

sale of tangible personal property under N.J.S.A. 54:32B-3(a).

For sales tax purposes, a law firm is not treated as the reseller of certain goods and services, although a law firm often charges its clients for goods and services that would be taxable if purchased at retail. For example, a law firm is not required to collect tax on the often substantial charges for copying documents, (taxable under N.J.S.A. 54:32B-3(a)) or for faxing services (taxable under N.J.S.A. 54:32B-3(f)), because they are provided to the client in conjunction with the professional legal services as the object of the agreement. Thus, the law firm is treated as the retail purchaser of copying and faxing services and must *pay* tax on such services, rather than collect tax from their client. The same analysis applies when a law firm is purchasing a videotaped deposition. The video production company may purchase blank tapes with a Resale Certificate and must charge sales tax on the sale of the videotape, regardless of how billed. Separately stated charges for a video playback service at hearings, depositions, etc. are not subject to sales tax.

Car Wash Business — A car wash business in New Jersey must collect and remit sales tax on the amounts that it charges customers for all services and all merchandise. These receipts will be taxable as either the sale of the service of maintaining and servicing tangible personal property, N.J.S.A. 54:32B-3(b)(2), or the sale of tangible personal property, N.J.S.A. 54:32B-3(a), respectively.

A car wash is generally treated as the retail purchaser of the various substances that it purchases for use in cleaning, washing, drying, polishing, deodorizing and otherwise maintaining its customers' vehicles. Therefore, as the retail purchaser, it must pay sales tax on these shop supplies. N.J.S.A. 54:32B-3(a).

The car wash may claim a resale exemption when it purchases items that it simply resells to customers as is. N.J.S.A. 54:32B-2(e)(1)(A). Examples would include cans of deodorizer spray, chamois cloths, jars of wax, etc., sold over the counter to customers for their own use.

In some limited circumstances, certain purchases of tangible personal property by the car wash for use in servicing customers' cars may be treated as purchases for resale. If the product purchased by the car wash is meant to become a "physical component part" of the vehicles on which the car wash performs its services, the product is deemed to be purchased for resale. N.J.S.A. 54:32B-2(e)(1)(B). In that case, the car wash may present a resale certificate (ST-3) when purchasing these items from a vendor who is registered to collect New Jersey tax. An example might be purchases of waxes that the business uses to wax a customer's car, and which are intended to leave a hard wax finish that remains on the customer's vehicle.

Sales of Energy to Exempt Organizations — The Energy Tax Reform legislation, effective January 1, 1998, imposed New Jersey Sales and Use Tax on natural gas, electricity, and utility service. P.L.

1997, c.162. The sales tax replaced the gross receipts and franchise tax which was imposed on utilities and passed along to all customers, including religious organizations, as part of the rate charged by an energy vendor. The Energy Tax Reform legislation was enacted with the same broad taxpayer base as the gross receipts tax that it replaced in order to maintain sufficient revenue for distribution to municipalities. Thus, the exempt organization provision in the New Jersey Sales and Use Tax Act was amended to make it clear there is no exemption for gas, electricity, or utility service purchased by otherwise exempt organizations, such as schools, churches, and nursing homes under N.J.S.A. 54:32B-9(c)(3).

Prepaid Gas Cards — The Division responded to correspondence concerning the taxability of prepaid gasoline cards.

Gasoline is exempt from New Jersey sales tax as a motor fuel. Thus, a prepaid gasoline card is not subject to tax.

A prepaid gasoline card should not be confused with a prepaid telephone calling card. Prepaid phone cards became subject to the retail sales tax as of January 1, 2000. P.L. 1999, c.248. Prior to that date, the tax was imposed at the time of use rather than at the time of sale. Prepaid phone cards are subject to tax as telecommunications services under N.J.S.A. 54:32B-3(f).

Universal Service Assessment/Presubscribed Interexchange Carrier Charges — Effective January 1, 1998, the Federal Communications Commission imposed the Universal Service Assessment on telecommunica-

tions carriers in order to fund the government's Universal Service Program. The Universal Service Program subsidizes telecommunication services to low income and rural communities as well as schools, libraries and health care facilities. The telecommunications company passes the cost of the Universal Service Assessment to its customers as part of the monthly bill for service.

The Presubscribed Interexchange Carrier Charges (PICC) are fees that the local phone company charges the long distance company for the right to use the telephone lines. The phone company also passes along this cost to its customers.

The New Jersey Sales and Use Tax regulations provide that excise taxes which are imposed on vendors, such as the Universal Service Assessment, are included in the receipt on which sales tax is computed. N.J.A.C. 18:24-1.4(b). Since telecommunications services, including cellular, are subject to New Jersey sales tax, the Universal Service Assessment is also subject to sales tax.

The definition of receipt does not allow a deduction for expenses of the seller, which become part of the taxable amount. Since the PICC is an expense incurred by the service provider which is passed along to customers, it is includible in the taxable receipt. □

In Our Courts

Gross Income Tax Claim for Refund Following Paid Assessment — *Pamela Cater and Thomas P Rowe. v. Director, Division of Taxation*, decided

continued on page 19

Fall 2000

April 28, 2000; Tax Court No. 002224-1999.

In April 1993, the Division issued a deficiency assessment for the amount plaintiffs claimed as a credit for taxes paid to other jurisdictions on their timely filed 1989 New Jersey gross income tax return. Plaintiffs filed a petition for a redetermination of the deficiency under N.J.S.A. 54A:9-9(b). After an administrative conference was held, the Director's July 1994 final determination disallowed the claimed credit. In August 1994, plaintiffs paid the deficiency and did not exercise their right to file a complaint with the Tax Court.

In January 1999, plaintiffs requested a refund by filing an amended 1989 New Jersey gross income tax return that claimed the same credit for taxes paid to other jurisdictions as the original 1989 return. The Division denied the refund request in January 1999 and noted as it did in its March 1999 final determination that this same matter was previously heard and decided in the prior July 1994 final determination. Thereafter, plaintiffs filed a complaint with the Tax Court.

As a general rule, N.J.S.A. 54A:9-8(a) provides that generally a taxpayer must file a refund claim within the later of three years from the time the return was filed or two years from the time the tax was paid. Although plaintiffs concede that the refund claim is untimely under 54A:9-8(a), plaintiffs claim that this general rule is inapplicable because they filed a timely petition for redetermination of the deficiency under N.J.S.A. 54A:9-9(b) and therefore their refund claim lies within the exception of

N.J.S.A. 54A:9-8(e). First, the Court ruled that section N.J.S.A. 54A:9-8(e) does not extend the time a taxpayer has to file a refund claim. Secondly, the Court ruled that although N.J.S.A. 54A:9-8(e) permits the Director to determine whether or not a taxpayer made a tax "overpayment" that can be credited to the taxpayer after the expiration of the applicable period of limitations, the payment of a deficiency assessment does not constitute an "overpayment." Therefore, the Court found that 8(e) was inapplicable to the instant case.

The Court found that the Director could consider a refund claim involving a paid gross income tax additional assessment under N.J.S.A. 54A:9-10(b). That section permits a taxpayer to file a refund claim provided that taxpayer did not protest or appeal from the additional assessment of tax. As plaintiffs previously protested the additional 1989 assessment, the Court found that this section was inapplicable.

The Court dismissed plaintiffs' complaint for untimely filing. Furthermore, the Court noted that the application of the *res judicata* doctrine was also appropriate in this case. The Court stated that the Division's denial of plaintiffs' 1993 petition for redetermination of the 1989 tax deficiency involving the claim for credit for taxes paid to other jurisdictions was exactly the same issue plaintiffs presented in their 1999 refund claim. "The doctrine of *res judicata* is designed to bar relitigation of a cause that has been finally determined between the parties on the merits by a tribunal with appropriate jurisdiction. See *Roberts v. Goldner*, 79 N.J. 82, 85

(1979). Our Supreme Court has observed that, as a general rule, an adjudicative decision of an administrative agency should be accorded the same finality that is accorded the judgment of a court. See *Bressman v. Gash*, 131 N.J. 517, 526. I have concluded that an application of the doctrine is appropriate in this case." Opinion, page 6.

Interest Deduction – Acquisition Indebtedness to Purchase Shares in S Corporation – *Carol and David Sidman v. Director, Division of Taxation*, decided April 24, 2000; Tax Court No. 1031-99.

Plaintiff David Sidman was a 4.32% shareholder in a corporation that qualified as a New Jersey subchapter S since January 1, 1994. In 1993, plaintiff purchased an additional interest in the corporation from two other shareholders so that he controlled 91.4% of the corporation. Terms of the purchase were a downpayment of approximately 7% and equal monthly payments over 15 years with interest at 8%.

At issue is whether a subchapter S shareholder may deduct interest paid on a loan used to purchase shares in the corporation to determine net pro rata share of S corporation income. The Court found that N.J.S.A. 54A:5-1p was the applicable provision associated with this issue and simply stated that gross income includes the taxpayer's net pro rata share of the S corporation's income. The Court stated that neither was there a New Jersey statute that permitted shareholders to deduct interest pertaining to their acquisition indebtedness concerning an S corpora-

continued on page 20

in our courts - from page 19

tion nor did N.J.S.A. 54A:5-1p or its legislative history reference the application of Federal principles to this issue. Therefore, the Court held that there was no authority to permit plaintiff to deduct interest pertaining to the S corporation acquisition in determining the net pro rata share of his S corporation income.

Motor Fuels Tax

Assessment - Inadequate Records – *Harvey Nobel & Beaverbrook Motors, Inc. v. Director, New Jersey Division of Motor Vehicles*, decided June 19, 2000; Tax Court No. 323-1999.

Harvey Noble is the shareholder of Beaverbrook Motors, Inc. (hereinafter BMI), a corporation that operates tow trucks and small tractor-trailers, as well as the sole proprietor of Beaverbrook Motors, a Gulf service station (hereinafter service station).

BMI vehicles obtained the majority of their fuel from the service station on an as-needed basis. At the time of each BMI fuel purchase, the service station processed a "house account" slip at the full-posted price. The house account slips were totaled and then debited to BMI's account on a daily basis through an inter-company accounting. Periodically, a settlement was made for the purchased fuel.

Pursuant to a Division of Motor Vehicle (DMV) audit, BMI was assessed tax due to DMV's denial of BMI's claimed fuel tax credit for motor fuel tax paid to New Jersey where fuel was used out-of-State because BMI's records were insufficient to establish fuel purchases in New Jersey. In accor-

dance with the regulations, DMV used a 4 mpg factor to estimate fuel use because BMI did not maintain adequate records. After a conference, DMV's Final Determination upheld the audit assessment providing that "bartering is not an acceptable means of proving that fuel was purchased and the tax was paid."

The Court first addressed whether DMV was precluded from claiming insufficiency of records as the basis for the assessment and limited to defending the assessment on the language contained in the Final Determination. The Court observed that case law did not require that an administrative agency state all possible grounds and theories to support their assessment nor did it preclude it from developing defensive theories to justify the assessment as long as it acts within the statutory period and meets due process requirements. The Court found that BMI was aware that DMV considered its records insufficient, that there was no claim of surprise or prejudice, and that case law indicated that alternative arguments would not prejudice the taxpayer because the Tax Court reviews proceedings *de novo*.

Addressing the issue of whether or not the house account slips constituted sufficient proof of New Jersey fuel purchases, the Court found that BMI's records were not in accordance with the Regulation's requirements because the records did not state all the required information. The Court refused to tailor an equitable remedy by relaxing the requirements of the Regulation. Furthermore, the Court stated that "[w]hether or not the taxpayer followed acceptable accounting procedures is also

irrelevant since its use of acceptable accounting procedures is not the standard for compliance with the New Jersey Motor Fuels Use Tax Act."

Finally, the Court upheld DMV's estimated fuel use of 4 mpg based on the standard announced in the International Fuel Tax Agreement Audit Manual to calculate the use tax liability in the absence of adequate or complete records. Therefore, the Court upheld DMV's Final Determination.

Sales and Use Tax

Assessment - Inadequate Books & Records – *TAS Lakewood, Inc. v. Director, Division of Taxation*, decided April 18, 2000; Tax Court No. 003058-98.

The Division's audit of plaintiff's 1993 and 1994 New Jersey sales tax returns revealed discrepancies between gross receipts reported on plaintiff's filed tax returns. Plaintiff's 1993 New Jersey sales tax return reported gross sales of \$47,115 whereas its 1993 Federal corporation income tax return reported gross sales of \$1,040,157. Plaintiff's 1993 New York general business corporate franchise tax return reported gross sales of \$1,040,157; and that \$207,491, or 19.95%, of these sales were attributable to New York. As to 1994, plaintiff's New Jersey sales tax return reported gross sales of \$62,533 whereas its Federal corporation income tax return reported gross sales of \$882,748.

The Division was unable to audit plaintiff's books and records because plaintiff disposed of them when it ceased business operations. In determining the

continued on page 21

in our courts - from page 20

\$76,061.76 plus interest sales tax assessment, the Division recalculated the amount of New Jersey gross taxable sales for 1993 and 1994 by accepting US gross sales as reported on the corporation income tax returns as total sales and reducing that amount by the approximate 19.95 percentage of 1993 sales attributable to New York.

Plaintiff challenged the Division's assessment claiming that (1) sales were not subject to sales tax, (2) sales attributable to New Jersey are lower than the Division determined, (3) it is entitled to sales tax credit for tax it paid to suppliers on goods and services subsequently resold, and (4) sales consummated with exempt entities amounted to approximately 5% of its sales. Substantiation for plaintiff's allegations rested on the testimony of its vice president and 50% shareholder who acknowledged that there was no documentary proof to support his testimony.

The Court ruled that where the plaintiff fails to maintain records the Division is permitted to determine the amount of tax from available information, including external indices, and that this determination carries a presumption of correctness. The Court held

that not only did plaintiff fail to rebut the presumption but that it had reviewed the audit figures based upon plaintiff's tax returns and found it to be reasonable and justified by law. □

In Our Legislature

Inheritance Tax

Executor Commissions — P.L. 2000, c.29 (signed into law on June 16, 2000) amends N.J.S.A. 3B:18-14 to clarify the calculation of the commissions to which executors of estates are entitled for Transfer Inheritance Tax purposes. This legislation became effective upon enactment. (See article on page 5.)

Miscellaneous

Earned Income Tax Credit — P.L. 2000, c.80 (signed into law on August 14, 2000) establishes a New Jersey Earned Income Tax Credit (EITC) program which will provide a refundable tax credit for eligible New Jersey residents with gross income of \$20,000 or less who receive a Federal earned income credit that is based on having at least one "qualifying child." The amount of the New Jersey EITC will be equal to a percentage of the recipient's Federal earned income credit, with benefits to be phased in over four

years. The New Jersey credit will amount to 10% of the Federal earned income credit for tax year 2000, 15% for tax year 2001, 17.5% for tax year 2002, and 20% for tax year 2003 and thereafter.

Petroleum Products Gross Receipts Tax

Rate Set at Statutory Minimum — P.L. 2000, c.48 (signed into law on June 30, 2000) sets the Petroleum Products Gross Receipts Tax rate on fuel oils, motor fuels and aviation fuel at the current 4 cents per gallon rate, the minimum statutory rate allowed. This prevents a possible administrative determination to increase the cents-per-gallon rate triggered by higher Statewide average gasoline prices. This law took effect immediately.

Constitutional Amendment

Senate Concurrent Resolution No. 1 (filed with the Secretary of State on June 30, 2000) proposes a Constitutional amendment providing for the dedication of revenues from the petroleum products gross receipts tax, and certain amounts from sales tax on revenues from the sale of new motor vehicles, for transportation purposes. The proposed amendment to the Constitution will be on the ballot for the general election on November 7, 2000. □

tax calendar

october

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2	1	2	3	4	5	6	7
0	8	9	10	11	12	13	14
0	15	16	17	18	19	20	21
0	22	24	24	25	26	27	28
	29	30	31				

October 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

October 16

- CBT-100** Corporation Business Tax—Annual return for accounting period ending June 30

continued

October 16 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

October 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

October 20 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Whole-sale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

October 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

October 31

- NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly return

november

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2				1	2	3	4
0	5	6	7	8	9	10	11
0	12	13	14	15	16	17	18
0	19	20	21	22	23	24	25
0	26	27	28	29	30		

November 13

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

November 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending July 31

continued

November 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

November 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

November 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Whole-sale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

November 27

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

december

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2						1	2
0	3	4	5	6	7	8	9
0	10	11	12	13	14	15	16
0	17	18	19	20	21	22	23
0	24	25	26	27	28	29	30
	31						

December 11

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

December 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending August 31

continued

December 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

December 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

December 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Whole-sale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

December 26

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

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from the director's desk

NJ “Participating State” in Streamlined Sales Tax Project

By her letter of intent, dated August 10, 2000, Governor Whitman has committed the State of New Jersey to being a “Participating State” in the interstate discussions of the Streamlined Sales Tax Project. The purpose of this Project is to develop a simplified system of state sales and use taxation.

As a Participating State, New Jersey is now entitled to vote at all Project meetings, and can more directly impact the direction of Project recommendations. Prior to becoming a “Participating State,” New Jersey had attended the Project’s monthly meetings and participated in Work Group discussions as an “Observer State” without voting rights. More information on the Streamlined Sales Tax Project appears in the *Sales Tax Initiatives* article on page 2 of this issue.